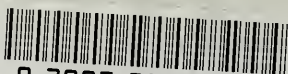


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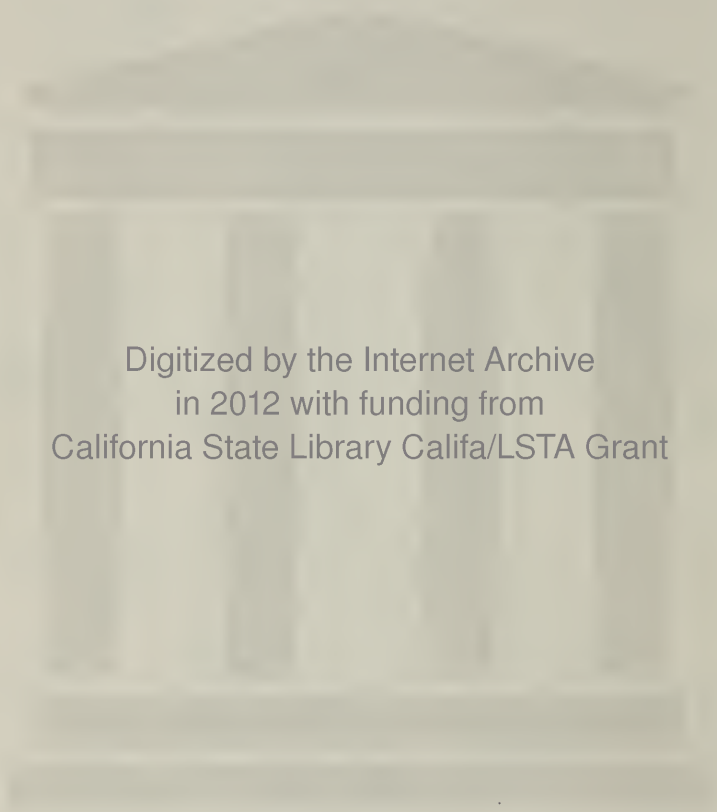


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RAILROAD MONOPOLY!

The Great Question Discussed by Pennsylvania's
Great Son,

JEREMIAH SULLIVAN BLACK,

Before the Judiciary Committee of the Pennsylvania Senate at the
Session of 1883.*

INTRODUCTION.

Mr. Chairman: The irrepressible conflict between the rights of the people and the interests of the railroad corporations does not seem likely to terminate immediately—I beg your permission to put our case on your record somewhat more distinctly than heretofore.

Why do I give myself this trouble? My great and good friend, the president of the Reading Railroad Company, expresses the suspicion that I am quietly acting in the interest of some anonymous corporation. I wish to contradict that as flatly as I can.

The charge that I am communist enough to wish the destruction of all corporate property, is equally untrue. I think myself the most conservative of citizens. I believe with my whole heart in the rights of life, liberty and property, and if anybody has struggled more faithfully, through good report and evil, to maintain them inviolate, I do not know who he is. I respect the State Constitution; perhaps I am prejudiced in favor of natural justice and equality. I am convinced that without the enforcement of the fundamental law honest government cannot be expected.

These considerations, together with the request of many friends, should be sufficient reason for doing all the little I can to get "appropriate legislation." At all events, it is unnecessary to charge me with any motive of lucre or malice.

It is not proposed by those who think as I do that any corporation shall lose one atom of its property. A lawful contract between a railroad company and the State is inviolable, and must not be touched by hostile hands, however had the bargain may have been for the people. Mr. Gowen, and all others with similar contracts in their hands, are entitled each to his pound of flesh, and if it be "so nominated in the bond" the Commonwealth must hare her bosom to all their knives and let them "cut nearest the heart."

But we, the people, have rights of property as well as the corporations, and ours are—or

at least they ought to be—as sacred as theirs. Between the great domain which we have conceded to them, and that which still belongs to us, the line is plainly and distinctly marked, and if they cross it for purposes of plunder they should be driven back under the lash of the law. It is not the intent of the amended Constitution, nor the desire of those who demand its enforcement, to do them the slightest injury. We only ask for that impartial and just protection which the State, as *parens patrie*, owes to us not less than to them.

THE COMPANIES NOT THE OWNERS OF THE RAILROADS.

In the first place, it will, I think, be admitted by all impartial persons of average intelligence, that *the companies are not the owners of the railroads. The notion that they are, is as silly as it is pernicious.* It is the duty of every commercial, manufacturing or agricultural State to open thoroughfares of trade and travel through her territory. For that purpose she may take the property of citizens, and pay for the work out of her treasury. When it is done, she may make it free to all comers, or she may reimburse the cost by levying a special tax upon those who use it: or she may get the road built and opened by a corporation or an individual, and pay for it by permitting the builder to collect tolls or taxes from those who carry and travel on it. Pennsylvania has tried all these methods with her turnpikes, canals and railroads. Some have been made at her own cost and thrown open; on others made by herself she placed officers to collect a special tax; others have been built for her by contract, in which some natural or artificial person agreed to do the work *for the privilege of appropriating the taxes which she authorized to be levied.*

But in all these cases the proprietary right remained in the State and was held by her in trust for the use of the people.

RAILROAD AND CANAL CORPORATIONS ARE PUBLIC SERVANTS.

Those who run the railroads and canals are always public agents. It is impossible to look at them in any other light, or to con-

* From "Essays and Speeches of Jeremiah S. Black." D. Appleton & Co., New York.

ceive how a different relation could exist; because *a railroad which is not managed by public agents, cannot be a public highway.* The character of these agents and the mode of their appointment, even upon the same work, have differed materially. The Columbia railroad, and all the canals, were for a time under the management of officers appointed by the Governor, or elected by the people, and paid out of the State Treasury. Afterwards the duty was devolved by the State upon persons associated together under acts of incorporation who contracted to perform it upon certain terms. The Erie and Northeast railroad was at first run for the State by a company; *the company was removed from its trust for misbehavior*; the Governor then took it and appointed an officer to superintend the work; later the Governor's appointee was displaced, with the consent of the Legislature, and the duty was again confided to a corporation newly chartered.

None of these agents—neither the canal commissioners nor the State Receiver, nor any corporation that went before or came after, had the slightest proprietary right or title to the railroads themselves. To say that they had would be as preposterous as to assert that township roads are the private property of the supervisors.

A RAILROAD BUILT BY AUTHORITY OF THE STATE, IN NO SENSE PRIVATE PROPERTY.

The legal relations existing between the State and the persons whom she authorizes to supervise her highways was somewhat elaborately discussed by the Supreme Court of Pennsylvania in the case of the *Erie and N. E. R. R. Co. vs. Casey* (2 Casey, pp. 307-324). It was there determined that a railroad built by authority of the State for the general purposes of commerce is a public highway, and in no sense private property—*that a corporation authorized to run it is a servant of the State* as much as an officer legally appointed to do any other public duty, as strictly confined by the laws, and as liable to be removed for transgressing them.

All the judges concurred in this opinion. The two who dissented from the judgment did so on the technical ground that certain circumstances, which would have estopped the State in a judicial proceeding disarmed the Legislature of the power to repeal.—Neither they nor any other judge in this country, whose authority is worth a straw, ever denied the doctrine for which I have here cited that case, though it may have been sometimes overlooked, ignored, or perchance evaded. This principle and no other was the basis of the decision in Pennsylvania and all the other States, that cities and counties might issue bonds or their money and tax their people to aid in building railways. [Because they were public highways.—EDS.] The Supreme Court of the United States has affirmed it in scores of cases. It was so universally acknowledged that the convention

of 1873 incorporated it into the Constitution as a part of the fundamental law. I do not know upon what foundation more solid than this any great principle of jurisprudence was ever established in a free country. When in addition you consider the reason of the thing, and the supreme necessity of it for the purposes of common justice, it seems like a sin and a shame and a scandal to oppose it.

RAILROAD AND CANAL CORPORATIONS ARE PUBLIC AGENTS;—HOLD THEM HARD TO THEIR RESPONSIBILITIES.

It being settled that the railroads and canals belong of right to the State for the use of the people, and that the corporations who have them in charge are mere agents to run them for the owners, it will surely not be denied that all proper regulations should be made to *prevent those agents from betraying their trust.* The wisdom is very plain of those provisions in our Constitution which put them on a level with other public servants, and forbid them to prostitute their functions to purposes merely mercenary, or to engage in any business which necessarily brings their private interests into conflict with their public duty. Seeing the vast magnitude of the affairs entrusted to them, and the terrible temptation to which their cupidity is exposed, it is certainly necessary that you hold them to their responsibilities, and hold them hard.

THOSE CORPORATIONS DENY THAT THEY OWE ANY RESPONSIBILITY TO THE STATE

But, on the other hand, the corporations deny that they owe any responsibility to the State, more than individuals engaged in private business. They assert that the management of the railroads being a mere speculation of their own, these thoroughfares of trade and travel must be run for their interest without regard to public right. If they take advantage of their power to oppress the labor and overtax the land of the State; if they crush the industry of one man or place to build up the prosperity of another; if they plunder the rich by extortion, or deepen the distress of the poor by discriminating against them, they justify themselves by showing that all this was in the way of business, that their interest required them to do it; that if they had done otherwise their fortunes would not have been so great as they are; that it was the prudent, proper and successful method of managing their own affairs. This is their universal answer to all complaints. Their protests against legislative intervention to protect the public always take this shape, with more or less distinctness of outline. In whatever language they clothe their argument it is the same in substance as that with which Demetrius, the silversmith, defended the sanctity of the temple for which he made shrines. "Sirs, ye know that by this craft we have our wealth."

That railroad corporations and their paid adherents should take this view of the subject is perhaps not very surprising. Nor

does it excite our special wonder to see them supported by the subsidiary rings whom they patronize. But, it is amazing to find that this odious and demoralizing theory has made a strong lodgment in the minds of disinterested, upright and high-placed men. Two members of the Senate Judiciary Committee—I do not say the ablest, because comparisons are odious—but they are both of them among the foremost men of the country for talents and integrity—these gentlemen emphatically dissented from me when I asserted that the management of the railroads was not a matter of business to be conducted like a private enterprise, merely for the profit of the directors or stockholders. A heresy so supported is entitled to serious refutation, however absurd it may seem on its face.

A PUBLIC DUTY MUST BE PERFORMED WITH AN EYE SINGLE TO THE PUBLIC INTEREST.

I aver that a man or a corporation appointed to do a public duty must perform it with an eye single to the public interest. If he perverts his authority to purposes of private gain he is guilty of corruption, and all who aid and abet him are his accomplices in crime. *He defiles himself if he mingles his own business with that entrusted to him by the government*, and uses one to promote the other. If a judge excuses himself for a false decision by saying that he sold his judgment for the highest price he could get, you cover his character with infamy. A ministerial officer, like a sheriff, for instance, who extorts from a defendant, or even from a convict in his custody, what the law does not allow him to collect, and puts the surplus in his pocket, is a knave upon whom you have no mercy. You send county commissioners to the penitentiary for consulting their own financial advantage to the injury of the general weal. When the officers of a city corporation make a business of running it to enrich themselves at the expense of the public, you can see at a glance that they are the basest of criminals. Why, then, can you not see that the officers of a railway corporation are equally guilty when they pervert the authority with which they are clothed to purposes purely selfish? *A railroad corporation is a part of the civil government as much as a city corporation.* The officers of the former as much as the latter are agents and trustees of the public, and the public has an interest precisely similar in the fidelity of both. Why, then, should partiality or extortion be condemned as criminal in one if it be tolerated as fair business when practised by the other? Yet there are virtuous and disinterested statesmen among us who think that faithful service ought not to be enforced against the railroad companies, however loudly it may be claimed by the body of the people as their just due, and no matter how distinctly it may be commanded by the Constitution itself.

I am able to maintain that all the corruption and misgovernment with which the earth

is cursed, grows out of this fatal proclivity of public servants to make a business of their duty. Recall the worst cases that have occurred in our history and see if every one of them does not finally resolve itself into that. Tweed and his associates in New York; the Philadelphia rings; the carpet bag thieves; the Star Route conspirators; all went into business for themselves while pretending to be engaged in the public service. Oakes Ames distributed the stock of the Credit Mobilier where he thought it would do the most good to himself and others with whom he was connected, and that was business in him who gave, and in them that took his bribes. Madison Wells, when he proposed to Mr. Kenner that he would make a true return of the election if he could be assured of getting "two hundred thousand dollars a piece for himself and Jim Anderson, and a less sum for the niggers," had as keen an eye to business as if he had been president of a railroad company, instead of a returning board. Certain greedy adventurers made it a business to rob the Nation of its lands, and uniting with Congress carried it on so magnificently that they got away with an area nearly equal to nine States as large as Pennsylvania. The imposition of the whisky tax, excluding what was held on speculation, was business to the officers and legislators who were sharp enough to anticipate their own votes. You will see on reflection that every base combination which officers have made with one another, or with outside parties, has been a business arrangement, precisely like that which the railroads justify on the sole ground that it is business. The effect is not only to corrupt those who engage in such transactions, but to demoralize all who are tempted by personal and party attachments to apologize for it.

When the officers of the Pennsylvania railroad company corruptly bought the remission of the tonnage tax, and thereby transferred to their own pockets an incalculable sum justly due to the State, it was business, rich to them and profitable beyond the dreams of avarice, while to the swindled tax payers it was proportionably disastrous. The nine million steal of later date was a business enterprise which failed, because Governor Geary most unexpectedly put his veto upon it. Still more recently the same organization undertook to get from the Treasury of the State, four millions of dollars to which it had no decent pretence of a claim. Never was any affair conducted in a more perfectly business like way. The appointed agents of the corporation came to Harrisburg when the Legislature was in session, and regularly set up a shop for the purchase of members at pre-arranged and specified prices. You condemn this piece of business because it was dishonest, but was it more dishonest than that which the same corporation habitually does when *it stands on the highway, and by fraud or force extorts from individual citizens a much larger sum in excessive tolls to which its right is no*

better than to the money it tried to get by bribery?

The functions of railroad corporations are as clearly defined and ought to be as universally understood as those of any servant which the State or General Government employs. Without proprietary right in the highways they are appointed to superintend them for the owners. They are charged with the duty of seeing that every needed facility for the use of those thoroughfares shall be furnished to all citizens, like the justice promised in *Magna Charta*, without sale, denial or delay. Such services, if faithfully performed, are important and valuable, and the compensation ought to be a full equivalent; accordingly they are authorized to pay themselves by levying upon all who use the road a tax or toll or freight sufficient for that purpose.

But this tax must be reasonable, fixed, certain and uniform, otherwise it is a fraud upon the people which no department of the State Government, nor all of them combined, has power to legalize.

IT IS EASY TO SEE THE MISCHIEF, &c.

It is much easier to see the nature and character of the mischief wrought by the present practices of the railroad companies than it is to calculate its extent. If your action depends in any degree upon the amount of the spoilation which the people of the State have suffered, and are now suffering for want of just laws to protect them, you certainly ought to direct an official inquiry into the subject and ascertain the whole truth as nearly as possible.

But investigations have already taken place in Congress and the Legislatures of several States; complaints founded upon specified facts come up from every quarter; verified accusations are made by some of the companies against others; railroad men have openly confessed their fraudulent practices, and sometimes boasted of the large sums they accumulate by them. Putting these together, you can form at least an approximate calculation. I doubt not you will find the sum total of the plunder they have taken in the shape of excessive charges to be frightful.

Three or four years ago a committee of the United States Senate collected the materials, and made a report upon this general subject, in which they showed that an excess of five cents per hundred weight charged on the whole agricultural crop of the then current year would amount to seventy millions of dollars. Upon the crop of the last year it would doubtless come nearer a hundred millions. The railroads would not get this sum, because not near all of it is carried, but it would operate as an export tax operates; that is to say, the producer, the consumer, or the intermediate dealer, would lose that amount on the whole crop, carried or not carried. In 1880 the charges from Chicago to the eastern markets were raised from ten cents per hundred weight to thirty-five cents, the latter

rate being unquestionably twice as high as a fair one. You can count from these data the terrible loss sustained by the land, labor and trade of the country. It was the end and the attainment of a combination still subsisting between the great trunk lines, as they are called, to pool their receipts, to stop all competition, *to unite the stealing power of all into one grand monopoly, and put the whole people at their mercy.* It was a criminal conspiracy by the common and statute law of all the States.

THE RIGHT TO RAISE OR LOWER THE RATES.

The magnitude of these excessive charges is not the worst thing about them. The corporations think it perfectly right to raise or lower the freight as they please without regard to the rights or interests of anybody but themselves. A grain grower, manufacturer, miner, or merchant, who can sell his goods at a profit, if he can get them carried at the rates of to-day, may find himself ruined tomorrow by an increase which did not enter into his calculations. A rise in the market enures not to the benefit of the producer, but to the use of the carrying corporations, which openly avow that their rule is to charge in all cases as much "as the traffic will bear;" that is to say, as much as the shipper can submit to without being driven entirely off the road. You must see plainly that this power to depress agriculture, to diminish the profits of manufacturing industry, and to skin the commerce of the whole country by the arbitrary use of a sliding scale upon freights, cannot safely be trusted to human hands, and especially not to irresponsible corporations whose interest, as well as their acknowledged principle of action, constantly impel them to abuse it. Can it be that a Pennsylvania Legislature will hesitate to curb the career of this destructive monopoly by adjusting the charges according to some rule equitable, fixed and certain.

THE WRONG OF DISCRIMINATION.

But even this sinks into insignificance compared with the wrong and evil of their discriminations. Common justice, sound policy, every sense of duty, the whole spirit and letter of the law, requires them to give every man equal facilities in the use of the roads, and to charge them at the same rates for the same class of goods, according to weight and distance. There can be no possible doubt about this. Every unprejudiced man who has sense enough to know his right hand from his left acknowledges that *equality must be the rule of right*; and he understands this perfectly well without looking at the Constitution, where it is solemnly declared to be part of the *lex legum*, the law of laws, and the rule of all rules on the subject. Yet this sacred principle is constantly and steadily violated, trampled under foot and treated with heartless contempt.

At the slightest glance you will see the enormous injury, direct and consequential, which these discriminations inflict upon the

public. A man who invests his capital, or employs his time in mining or manufacturing, can be driven into bankruptcy at any time by a discrimination against him, and in favor of his competitors. This is done every day, and all the time, not in a few cases here and there, but systematically and regularly, whenever a carrying monopoly conceives that its own interests can be promoted in that nefarious way; and it will continue to be done until the prohibition of the Constitution is enforced by penal enactment.

THE FOUL BULK OF THESE ENORMITIES.

Instead of breaking the foul bulk of these enormities, I will give you a sample; convenient, because it is small and easily handled. A neighbor and friend of mine (in partnership with another) became the lessee and operator of a coal mine in Northumberland. For a short distance they were obliged to carry their product over one of the branches of the Pennsylvania company; they were charged for the use of the road and motive power alone—there was no loading or unloading in the case, and no cars were furnished by the company—at about the rate of twenty cents per ton per mile; while others whom the monopoly chose to favor were let off at two cents. They paid the excess under protest, and brought suit to recover it back. It was as simple a case of extortion as can be conceived; but certain officers of the Pennsylvania Railroad Company swore that in their judgment it was right to commit it, and moreover declared that it was a usual, common and customary practice. I blush to acknowledge that in all this the Supreme Court endorsed and abetted the corporation. The dialectics of the decision turned on a *prohibition in the charter against charging more on an average than four cents per ton per mile*—which was construed as a legal warrant for any robbery of one person which the company could prove to be balanced by the aggregate of favors shown to all others. *But neither the greatest corporation in the State, nor the highest judicial tribunal, paid any respect whatever to the principle that all men's rights to the use of a public highway are equal.*

It is known and not denied that this equality of right (sacred and fundamental though it be), is by the common practice of carrying companies corruptly disregarded.

If you want to drive business competition out of the field, bribe a railroad manager to raise the freights upon your rivals and lower your own, or take the whole board of directors into partnership with you, or promise to divide the spoils with the corporation, and they will make you a monopoly with power to plunder, limited only by the range of your dealings. The loss thus inflicted upon the worthiest men in the land is startlingly large. By a single one of these arrangements—that with the Standard Oil Company—the estimated injury direct and consequential to honest persons within the State,

amounts to not less than a hundred and fifty millions of dollars. For this fact you have the statement of Mr. Gowen, whose veracity no man that knows him will doubt, and whose faculties of observation, sharpened by a personal interest in the subject, make him a most intelligent witness.

THEY VICTIMIZE THE PEOPLE REMORSELESSLY.

At whatever place one of these railroad corporations has power to control the whole carrying trade, or where several combine together for that purpose, they victimize the people remorselessly. I give you the example of York for the reason that it presses itself on my attention with peculiar force. The freight exacted on the single article of anthracite coal is nearly one dollar per ton more than is charged upon the same commodity carried from the same mine and delivered by the same company at Baltimore. In all reason and conscience it should be from fifty cents to a dollar less, seeing that the distance is sixty miles greater to Baltimore. That makes the discrimination against York at least equal to a dollar and a half on every ton. The quantity consumed in the latter place is something upwards of a hundred thousand tons; and the excessive tax upon it all is therefore one hundred and fifty thousand dollars. Every cent of this is as wrongfully taken as if it were feloniously stolen. It amounts to many times as much in the aggregate as all the legitimate taxes which the same community pay for the support of the State, county, schools and alms houses. Nay, it is more than all the taxes imposed for those purposes on the whole of the great county in which the town of York is situated. A manufacturer there who uses two thousand tons of coal per annum must pay three thousand dollars of blackmail to the railroads, or to the monopoly which they have created, unless the influence of his wealth gets it remitted. But the largest part of it is levied upon poor laborers whose wages are barely sufficient to furnish their families, in scanty measure, with food, shelter and clothing; much of it is paid by the contributions of charity for those who would otherwise perish by cold and hunger. The man who can hear the simple story of this wrong without indignation must be as cold-blooded as a snake.

You need not confine your sympathies to York. I can give you no exact account of similar suffering inflicted on Philadelphia. But any officer of the Reading company can furnish it. Mr. Gowen, free spoken as he is about the sins of his rivals, is naturally reticent concerning his own. But if he opens his mouth he will tell you the truth; and, unless I am much mistaken, it will be an awful tale of wrong and oppression.

THEY HAVE VIOLATED THEIR CHARTERS.

A full inquiry, if it shall ever be instituted will probably show that nearly all the railroad corporations—the smaller ones follow-

ing the example of the greater—have violated their charters by engaging “in mining and manufacturing articles for transportation over their own works,” and thus acquired a monopoly of the production as well as the carrying. It is in this way that the Reading company has got the coal market of Philadelphia under its foot. Why should not that corporation and the others be made to respect the majesty of justice by an enforcement of the Constitution (sec. 5, art. xvii,) which, if it leaves them what they have already got in violation of law, will at least prevent or punish such outrages in the future.

THEIR LOCAL RATES.

The imperious necessity, however, of enforcing the Constitution arises out of the depredations which they may commit upon all classes everywhere within the State, in what they call their local rates. You can take the figures known to be true and demonstrate by the plainest process of simple arithmetic that their tariff of rates for carrying goods from place to place within the State is *extortionate beyond all reason*.

They have not the face to deny that their through rates are high enough to give them all the compensation they can reasonably demand for that part of their service. The trunk lines struggled and fought for that trade against one another with a fierceness which showed that they regarded it as very profitable. Their own competition reduced it for a while, but they combined and raised their charges high enough to satisfy all of them. It is ridiculous to say that this mutual agreement fixed the rates below a fair standard. This is a sort of error which monopolists never commit. Accepting the almost unanimous testimony of disinterested persons who ought to know whereof they affirm, the belief is fully authorized that they have fixed their through rates unreasonably high; but we will assume that they are only fair. That point being satisfactorily established, it follows, as the day follows the night, that the much higher rates which they charge on local freights are *unjust and extortionate*, a palpable violation of our rights, a gross offense against the Constitution.

I use the word rate in the popular and legal sense, as meaning the ratio or proportion of the whole charge to the distance the freight is carried. Thus, if a ton be carried six hundred miles from Chicago to Philadelphia for five dollars and the same charge be made for carrying it twelve miles from Philadelphia to Media, the *rate* in the latter case is fifty times as high as in the former. I am credibly informed that such disproportioned charges are or have recently been made, and that as a general rule all local freights, whether the haul be long or short, are charged without regard to distance the same, or nearly the same, that would be charged on the same weight if carried from Chicago to Boston. To the extent of this enormous

discrimination against our own people they are robbed and plundered.

The effect of it upon the agricultural interest cannot be ascertained exactly without an investigation, which you can make, and I cannot; but the reasonable probability is that it takes most unjustly from seven to ten cents per bushel from the price of all grain grown in the State and correspondingly reduces the value of all other products.

Then look how it touches the rights and interests of consumers in the great centers of population. Within a circle of one hundred and fifty miles in diameter around Philadelphia, provisions enough might be raised to feed the city, but they cannot be taken there without paying a freight on them as heavy as it would cost to bring them from Illinois or Wisconsin. Thus an army of a million souls, some of them half mad with hunger, virtually have their base of supplies moved back six or seven hundred miles away.

THEY HAVE ANOTHER WAY OF CHEATING THE PUBLIC.

These railroad men have another way of cheating the public; not for the benefit of their corporate treasuries, but to *swell the private fortunes of the managers*. A ring of them is formed into a separate transportation company, with the privilege of carrying on their own roads at the highest freights they can extort. By means of preferences and discriminations, the parent corporation forces into the hands of its bastard offspring as much of the business as it wants; for the shipper who refuses to patronize the ring, must suffer the penalty of still higher rates as well as delay and difficulty. The convention of 1873 believed that this was one of the devices for fleecing the trade of the Commonwealth which ought to be broken up, and the people adopted that opinion. Do you wish to continue it? If not, why do you hesitate to carry out the constitutional prohibition?

Perhaps, the most remarkable, certainly the boldest thing about the discriminations we complain of, is that they are always avowedly made against those who are least able to endure the wrong. A heavy grain dealer in the West who ships his millions, may get rates ninety per cent. below those extorted from a Pennsylvania farmer, with only a thousand bushels to carry. Between all rivals of unequal fortune, the railroad king is ever strong upon the stronger side, and never fails to make his discrimination against the weaker concern whose business is conducted on the smaller scale. In my town of York, the demand of some very rich manufacturers for lower rates has been conceded with gratifying promptness, but you might as well plead pity with a wolf, as ask the monopoly to relieve a starving laborer by taking the excessive charges off his bread and fuel. Indeed, if the tariffs of railway charges be founded in any rule at all

it is this: That all rates shall be high in inverse porportion to the magnitude of the cargo, and the distance it is carried; the practical effect of which is to *grind the face of the small trader that the great one may increase in fatness.*

The only argument they make against the equality of rates commanded in the Constitution is that they cannot afford it; that they must charge higher for short hauls and light loads, or else their compensation will be less than for the greater service. If this were true, it would be no ground of justification. But, in point of fact, it is wholly untrue. It is not more difficult or costly to carry a hundred tons for fifty shippers, than it would be to carry the same goods for one. The expenses incident to the reception and discharge of a cargo may be greater in porportion for short hauls than for long ones, but you can make that all even by allowing them to charge in addition to their mileage, for loading and unloading, whether the haul be short or long. These terminal expenses which they make so much ado about are nothing as an excuse for the enormous excesses of their local rates, and they know that very well. Their real reason is that they find it easier, safer and more profitable to *cheat a thousand poor men than one who is powerful enough to resist them, or rich enough to bribe them.*

A CHARTERED RIGHT TO DO THOSE THINGS.

But they insist that they have a chartered right to do these things; that they have purchased from the State the privilege of charging unreasonable tolls, and making such discriminations as they think best for themselves without regard to justice; that the State had sold out to them the power of protecting the people against any wrong of that kind which they may choose to commit, and that the Constitution which forbids them is itself unconstitutional, because it impairs the obligation of a contract. Let us see whether there be or not any truth in this plea.

If the State had in express terms authorized them to impose unreasonable tolls or taxes upon the people for the use of their own roads, the grant would be void. Judge Baldwin's opinion to that effect in *Bnaparte vs. The Camden and Amboy Railroad Company* has never been denied or its soundness doubted from the day it was delivered to the present time. To give the corporation a power like that would be to give it the public highway as private property; to arm a body of mere adventurers with the police authority of the Commonwealth, and to convert railroad managers from public servants into public robbers. You might as well say that the Legislature could sell the State out and out.

Upon the same principle a grant of authority to discriminate between one citizen and another is worthless. The rights of all the people to be protected against robbery and extortion are precisely equal, and the Legis-

lature cannot barter away one more than the rest; that is to say, a wholesale bargain of that kind would be no worse than a contract to sell the rights of individual citizens at retail.

If, therefore, these companies had a bargain with the State, expressly giving them power to charge unreasonable or discriminating freights, it would be a mere nullity and of course revocable at the will of the Legislature.

But no such contract was ever made between this State and any railroad company, at least I never saw an act of incorporation upon which a decent pretence of that kind could be set up.

IN PUBLIC GRANTS NOTHING PASSES BY CONSTRUCTION.

You must remember that in a public grant, whether of land, money or franchises, nothing passes by construction; the grantee at the very utmost gets only what is given in express words of which the sense is too plain to be misunderstood—nothing goes by inference—no ambiguous phrase carries with it anything to swell the dimensions of the gift.

Now, where is the express grant of power to take more than a fair and reasonable toll for the use of any railroad? In what act of incorporation is it stipulated that the State may not adjust the tolls according to what she, by her proper authorities, shall deem a reasonable rule? The sole answer ever given to this is, that in some, if not all of the charters, there is a provision *forbidding* the company to make any charge beyond a certain rate per ton per mile, and from this prohibition against taking more they infer the right to take, in spite of the State, anything they please under that maximum, whether it be reasonable or not. But it is precisely such inferences that you cannot make; they are excluded by the rule of interpretation already mentioned.

Neither does their practice of discrimination find the slightest countenance in any word of the charters. When did you ever see an act of incorporation expressly declaring that the company shall have power to make a difference between two citizens whose legal and natural rights to the use of the highway are precisely the same? Where do you find the words which clothe any company with the awful power to crush out the business of one man with burdens which he cannot bear, in order that another, in which the railroad has an interest, may be built up? But especially and particularly I desire to know what part of any bargain with the State justifies the extortion of higher rates from a poor man, on his little freights, than from a rich one on his great and valuable cargoes? If you cannot put your finger on the very words that give this authority, then the authority is withheld and the practice forbidden.

But that is not all. The limitation of the charges to rates, perfectly and uniformly pro-

portioned to weight and distance, must be apparent to any one who will consider the nature of the contract, the subject matter of it and the parties to it. The Commonwealth, reserving the equal proprietary rights of all the people to the use of the highway, *agrees to employ a corporation as her agent*, to see that the exercise of the right by every citizen is properly facilitated, and never, in any case, impeded, delayed or hindered. The agent agrees to do this service at rates which, in the aggregate, will be a reasonable compensation for *all* the labor and expense of it. As between the State, who is the *employer*, and the corporation, which is the *employee*, the contract is an entire one—a lump bargain—an agreement to do one whole job, which comprehends all the carrying for all the people on that highway at a price for which the only measure furnished by the contract is weight and distance. Whenever, in those acts of incorporation, any mention is made of rates, taxes or tolls, they are spoken of as proportioned to the use made of the road by him who pays them—so much per ton per mile, whether the miles be many or few, up grade or down, without regard to the number of tons carried at one time, or at different times, for the same shipper.

Let me illustrate a little further. If you make a contract to do a job of excavation at a price per cubic yard, which gives you a heavy profit on the whole job, have you a legal right to demand additional pay for particular parts of it, which you allege to be harder than the rest? I do not say what claim you might have upon the liberality of your employer if the bargain, taken altogether, were a losing one; I only ask whether you could, by construction of the contract, charge more for one yard than another?

Take a case more precisely analogous. A contractor agrees to pave a mile of street at so much per foot, taxing the owners of the lots for the number of feet that fronts upon each one's property. Such contracts have been often made by the authorities of towns and cities, and they have never been understood to warrant a higher charge per foot against the owners of small and cheap lots than against the proprietors of those which are more valuable.

Reasoning fairly from premises known to be true, you cannot escape the conclusion that the extravagant and discriminating charges of these corporations are a *fraud upon their own charters*, as well as a gross wrong to their victims. The contracts they invoke to save them from the justice of the State are as strong against them as the Constitution itself.

THERE IS A POWER OF THE STATE TO CONTROL THEM.

But there is a power of the State to control them, to check their rapacity, and to make them honest which lies back of all this. The police authority, of which she cannot disarm herself if she would, enables her to

regulate the use, even of private property, in such manner that neither the general public nor particular individuals can be made to suffer by it unjustly. Upon that principle you can forbid an excessive rate of interest upon the loan of money, fix the charges of hack-drivers, or ferrymen, or tavern keepers, or the owners of grain elevators.

THE STATE CAN ABOLISH MONOPOLY.

Besides all that, the State can abolish a monopoly, or bring it to terms of justice, at any time by virtue of her right of eminent domain. All property, corporeal and incorporeal, is held upon condition that it may be divested whenever the general interest requires it. *All charters and acts of incorporation are subject to such modification as may be necessary to prevent the owners from doing wrong to the public.* This principle was expressed in the Constitution by the amendment of 1856; but that was not its origin; it existed from time immemorial as a rule of public and universal law. It has always been one of the powers of every sovereign government, and it applies with equal force to all charters, whether dated before or after 1856.

These are arguments in favor of the power. Except in Pennsylvania, it would not be necessary to state them. Everywhere else the most zealous advocates of corporate monopoly concede the authority in question, while they deprecate its exercise. But here the shallow notion still lingers, that an act of incorporation is an irrevocable license to defraud and plunder whomsoever the managers please to select as their prey.

FREE TICKETS

I have hesitated to speak of free tickets. I can understand how a thing so cheap might be accepted as a mere courtesy, like a drink or a dinner. Perhaps, therefore, it is not *malum in se*. But since 1874 no man can hold office without taking an oath to obey the Constitution, which expressly prohibits free passes. Can that oath be violated with a safe conscience? I am a private citizen, and I speak with respect for the better judgment of others when I say that Executive and Judicial officers who have acted thus during the last ten years ought to be impeached and removed from their places. But that is easier said than done; for the House of Representatives, which should prefer the impeachment, and the Senate, which has exclusive jurisdiction to try it, are tarred nearly all over with the same stick.

The legal predicament in which this practice places the railroad officers is somewhat worse. The passes which they distribute are things of considerable value; worth, perhaps, two or three hundred dollars apiece, and hundreds of thousands altogether. If the agents of the company would bring up that much money in a bag, at the first meeting of every Legislature, and hand it around to the members, dishing out their shares to the judges and executive officers, it would look very

much like wholesale bribery. But to bribe an officer it is not necessary that money should be used. Giving or offering "anything of value, testimonial, privilege or personal advantage," is, by the Constitution and the statute, the same crime as giving silver dollars, gold eagles or greenbacks. It must appear, however, that it was given to *influence* the officer or member of the General Assembly in the performance of his public or official duties. That is undoubtedly the very purpose and object of giving passes to members of the Legislature. I do not say or think that those Senators and Representatives who receive them consent to be so influenced. But that does not redeem the guilt of the giver, to whom it is impossible to ascribe any other intent than the *criminal one*. Those great corporate officers and their respectable subordinates, who are concerned directly and indirectly in these practices, are probably ignorant of the existing law. They ought to be solemnly warned by some penal enactment directly and exclusively aimed at this besetting sin.

IS THE LITTLE FINGER OF MONOPOLY THICKER THAN THE LOINS OF THE LAW?

We are often told that in this struggle for honest government against the power of the railroad corporations the just cause has no chance of success. We do seem to be out on a forlorn hope. The little finger of monopoly is thicker than the loins of the law.

The influence of our enemies over the Legislature is mysterious, incalculable, and strong enough to make the Constitution a dead letter in spite of oaths to obey it, and a popular demand, almost universal, to enforce it. There is no other subject upon which the press is so shy as upon this, the most important of all. *Afraid to oppose the corrupt corporations, and ashamed to defend them, it sinks into silent neutrality*. Prudent politicians always want a smooth road to run on, and the right path here is full of impediments. In this state of things we seem to be weaker than we really are; for the unbroken heart of the people is on the side of justice, equality and truth. Monopolists may sneer at our blundering leadership and the unorganized conditor of our common file, but they had better bethink them that when the worst comes to the worst, our raw militia is numerous enough to overwhelm their regulars, well-paid and well-drilled as they are. They have destroyed the business of hundreds for one that they have favored. For every millionaire they have made ten thousand paupers, and the injured parties lack no gall to make oppression bitter.

The people, certainly, got one immense advantage over the carrying corporations when they adopted the XVII Article of the Constitution. That concedes to us all the rights we ask, puts the flag of the Commonwealth into our hands and consecrates our warfare. The malign influence that heretofore has palsied the legislative arm cannot

last forever. We will continue to elect representatives again and again, and every man shall swear upon the gospel of God that he will do us the full and perfect justice which the Constitution commands. At last we will rouse the "conscience of a majority, screw their courage to the sticking place, and get the appropriate legislation" which we need so sorely.

Whenever a majority in both houses become independent enough to throw off the chains which now bind them to the service of monopoly—when frequent repetitions of the oath to obey the Constitution shall impress its obligation upon their hearts—when admonition and reproof from within and without—"line upon line, precept upon precept, here a little and there a little," shall have taught them that fidelity to the rights of the people is a higher virtue than subserviency to the mere interests of a corrupt corporation—when the Seventeenth Article shall have been read and re-read in their hearing often enough to make them understand the import of its plain and simple words—then, without further delay and with no more paltry excuses, they will give us legislation appropriate, just and effective. A tolerably clear perception of their duty, coupled with a sincere desire to do it, will enable them to catch the shortest and the easiest way. All trifling with the subject will cease at once; all modes of evading this great point will go out of fashion; no contrivance will be resorted to of ways not to do it while professing to be in favor of it; our common sense will not be insulted by the offer of a civil remedy to each individual for public offenses which effect the whole body of the people and diminish the security of all men's rights at once. The legislative vision, relieved from the moral *strabismus* which makes it crooked now, will see straight through the folly of trying to correct the general evil except by the one appropriate means of regular punishment at the suit of the State. Does this seem harsh? Certainly not more severe than any other criminal law on our statute book which applies to railway managers as well as to everybody else. They need not suffer the penalty unless they commit the crime; and they will not commit the crime if you make a just penalty the legal consequence. Pass a proper law to-day and they will be as honest as you are to-morrow. Every one of them can be trusted to keep clear of acts which may take him to the penitentiary. They have been guilty in their past lives, and will continue in evil doing for some time to come because the present state of your laws assure them that they shall "go unwhipped of justice." But threaten them with a moderate term of imprisonment and a reasonable fine, and they will no more rob a shipper on the railroad than they will pick your pocket at a prayer meeting. Your law will do its work without a single prosecution. Thus you could, if you would, effect a perfect reform,

and yet not hurt a hair on any head—"a consummation most devoutly to be wished."

But it is not to be expected that such good will come immediately. Nearly ten years ago the Legislature was commanded to carry out the beneficent measure of the Constitution. For nine years that illustrious body was a dumb impediment to the course of justice—all its faculties paralyzed by some inscrutable influence—dead—devoid of sense and motion, as if its only function was to "lie in cold abstraction and to rot." At last, when it was wakened up by the present Gov-

ernor and reminded of the Seventeenth Article, it opened its mouth and spoke as one who did not know whether he was sworn to oppose the Constitution or to obey it. Some members have shown their utter hostility to it, some seem willing to defend small portions of it, and one Senator discovered that it was all equally sacred. But his plan meets no favor. Still, we need not despair. The people and the Constitution, mutually supporting one another, will be triumphant yet. Meanwhile let all the railroad rings rejoice. This is their day; ours is to come.

